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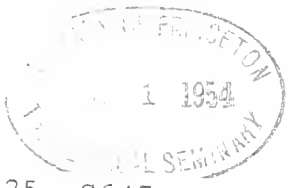

Professor W. Robertson Smith.

THE ACTION OF THE FREE CHURCH COMMISSION *ULTRA VIRES:*

A REPLY

TO THE

"ACTION OF THE COMMISSION EXPLAINED AND VINDICATED, BY THE REV. J. ADAM, D.D."

BY

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Professor W. Robertson Smith.

THE ACTION OF THE FREE CHURCH COMMISSION *ULTRA VIRES.*

THERE will be a twinkle of amused satisfaction in the eye of many elders in Glasgow and the west country when they observe the announcement of Dr. Adam's pamphlet. For did not the Doctor lecture[1] them roundly from his place in the Presbytery of Glasgow for venturing to ventilate their grievances elsewhere than on the floor of the Presbytery! And now it would seem that their censor himself, finding his own chosen arena too limited a sphere for the exercise of his eloquence, has come forth to the outer world to enlighten those who sit in darkness, and who "do not understand even the merest elements of the questions with which they have been dealing"—a judgment which the eldership will probably be expected to accept with becoming humility!!

The General Assembly, Synods, Presbyteries, and Kirk Sessions are the ordinary courts of our Church, possessing

[1] In his speech in the Presbytery of Glasgow, on December 2d, Dr. Adam is reported to have said, "He did not think the elders were pursuing a very wise course at present. That Court was not a mere clerical body, nor was the Commission or the Assembly. The elders had equal representation; and why did they not come there and meet them face to face, and tell them wherein they were wrong, and not go to public meetings, which could only have the effect of causing agitation and creating anxiety and alarm in the community." Observe, *equal representation.* The Presbytery is made up of *all* the ministers in the district, and *one* elder for each congregation, being one in every twelve or fifteen of the whole eldership in the Presbytery. The ministers are always members, and each elder often for only six months at intervals of many years. Yet this, according to Dr. Adam, is *equal representation!*

inherent rights and powers which form the basis of all Presbyterian Church government. Unlike them, the Commission has no inherent powers, but only such as are conferred upon it by the Act of Assembly under which it is constituted. This Act, as at present framed, was first passed in 1844, and has been re-enacted without alteration each year since that time. The Commission is composed of all the members of the Assembly, and one additional member, who must be a minister nominated by the moderator, whereby Presbyterian parity is disturbed, and a majority of one established in favour of the clerical element. It is in reality a Committee of the Assembly, say a Committee of the whole house, vitiated in that respect as a representative body by the introduction of a foreign element —the additional member above referred to.

Dr. Adam contends that the recent action of this Court in Prof. W. Robertson Smith's case was not *ultra vires*, and appeals in proof of his contention to the *Act* under which the Commission is constituted, and to two precedents which he quotes. The clauses of the *Act* bearing on the subject under discussion are as follows; the first four are quoted by Dr. Adam:—

"(1) And the Assembly fully empower the said Commis-
"sion, or their quorum[1] above mentioned, to cognosce
"and finally determine as they shall see cause, in
"every matter referred to them, or which shall be
"referred to them, by or in virtue of any Act or
"order of the Assembly; (2) And to do everything
"contained in and conform to the instructions given,
"or to be given by the Assembly; (3) and to *advert*
"to the interests of the Church on every occasion,

[1] *Thirty-one* members, sixteen of them being ministers, make a valid meeting of the Commission.

"that the Church do not suffer or sustain any preju-
"dice which they *can prevent*, as they will be answer-
"able; (4) Provided always that this general clause
"be not extended to particular affairs or processes
"before Synods or Presbyteries, that are not of
"universal concern to or influence upon the whole
"Church; (5) In all their actings they are to proceed
"according to the Acts and Constitution of this
"Church, and to do nothing contrary thereto, or to
"the prejudice of the same."

A consideration of this constitution renders it evident that there are two modes by which cases may be brought before the Commission—

(1) By *direct reference* from the General Assembly, as provided for in clauses Nos. 1 and 2.

(2) By being *originated* in the Commission itself through its own motion, prompted, of course, by representations from members, or from individuals or bodies external to the Commission, under authority of clause No. 3, controlled by clauses Nos. 4 and 5.

In interpreting this Act clauses Nos. 1 and 2 require to be taken together; they form parts of a whole and are complete in themselves, controlled by the general clause No. 5. The powers conferred by clauses Nos. 1 and 2 are applicable exclusively to cases *referred* to the Commission by the General Assembly, and are not available to be used in conducting cases raised in virtue of powers conferred by other clauses. By these two clauses judicial powers are conferred upon the Commission in dealing with the cases referred to it, but the exercise of these powers is restricted to the cases so referred. Clause No. 3 is also a complete whole controlled by clauses Nos. 4 and 5, and is obviously intended

to apply to emergencies which may arise subsequently to the meeting of the General Assembly, and consequently respecting which it could not give any instructions or make any reference. Construing the Act generally, then, it is evident that the exercise of judicial powers is limited to cases coming under the conditions of clauses Nos. 1 and 2, and that the exercise of judicial powers in cases raised under clause No. 3 could be warranted only on the supposition that the General Assembly had confided to the Commission power to act judicially in *all cases* where such action seemed needful. But if the General Assembly had intended to grant such power, it would naturally have thought proper to express its intentions in clear and distinct language. Moreover, as without the limitations expressed in clauses 1 and 2 the granting of such power would in reality be constituting a *second General Assembly*, we may fairly conclude that no such intention was present to the mind of the framers of the Act which forms the constitution of the Commission.

Obviously therefore clause No. 3 must be construed as authorizing some procedure short of judicial action. The appointment of a Committee to examine writings and report thereon to the Commission seems to come fairly within the powers conferred by this clause. In like manner the Commission would apparently be acting within the limits of its powers were it to send an expression of opinion based on such report to any Presbytery or Committee of the Church specially interested in the cause under discussion, for instance, the Presbytery of Aberdeen, or the College Committee, or both. But this exhausts the power of the Commission. While it may express an opinion respecting the writings of an office-bearer, or respecting his moral conduct, there is no authority given to take action against him personally, to remove him from his position, or to dis-

rate him from his status. Such power the General Assembly has reserved to the proper courts, which possess the inherent right to try and to *settle* such questions.

Clause No. 3 empowers the Commission "to *advert* to the interests of the Church on every occasion, that the Church do not suffer or sustain any prejudice which they *can prevent*." *Can prevent*—these are controlling words in this clause of the Act. The Commission not being possessed of inherent powers, but only of such as are conferred upon it by the Act, it becomes important to ascertain what *these words* mean in this clause, and what they *do not mean*. The latter will suffice at present. They obviously do not mean that the Commission is to *prevent* by taking judicial action; and looking to the injunction contained in clause No. 5, they do not mean that the Commission is to anticipate, set aside, or otherwise interfere with the action of the Presbytery or other ordinary Church court. But to remove a professor, minister, elder, or deacon from his official position, or to suspend him from discharging the functions of his office, is in reality judicial action in its most pronounced form; and to do so without the express sanction of the General Assembly is, in addition, to violate the injunction contained in clause No. 5 by interfering with the proper duty of the ordinary Church courts.

It is contended no doubt that Professor Smith was merely "*instructed to abstain from teaching his classes during the ensuing session*," and that such an instruction is not suspension, and is not judicial action. The major duty laid by the Church upon a professor is to teach students. The recent decision of the Commission is an inhibition from teaching students. Professor Smith, therefore, has by that decision been disqualified from performing the major function of the office to which he was appointed. To maintain

that this is not suspension is surely an abuse of language. We are asked to accept this contention, apparently because the Commission in its judgment has employed the words *instruct to abstain from teaching*, in place of *suspend* from teaching. In doing so they merely employ a *euphemism*, which will mislead few as to the reality of the suspension, except those who are blinded by the effects of their own misdirected zeal.

The conclusion we have arrived at is perfectly obvious, that the *Commission* suspended Professor Smith, and in doing so acted *ultra vires*, and in violation of its constitution.

We might naturally stop here, for no precedents, however significant, can avail to legalize acts that are found to be *ultra vires*. It may, however, be instructive to *advert* for a moment to the two precedents adduced. Dr. Adam informs us that there are "plenty of precedents," and from that plenty he has selected two, no doubt the most telling he could find, belonging to the stormy period of the "Ten Years' Conflict." It would have been preferable had he given *post-disruption* in place of *pre-disruption* precedents, seeing that the Act defining the powers of the Commission was only passed in its present form in 1844.

The first precedent adduced is that of the *Strathbogie ministers*, usually called the *Marnoch case*. Dr. Adam informs us correctly that this case was *referred* to the Commission by the General Assembly, consequently it falls under the operation of clauses Nos. 1 and 2 of the Act, and is *not at all a case in point*. It is *no precedent* for action under clause No. 3, which governs the case under discussion.

The second precedent adduced is the *Culsalmond case*, and it serves Dr. Adam's purpose no better than the first. The decision in that case by the Commission did not alter the relation of parties, but merely preserved the *status quo*.

The leaders in the "Ten Years' Conflict" had a grand conception of the rights and privileges of office-bearers and members of the Church, and were the last men to give way to any temptation to interfere with their exercise in an unconstitutional manner. In addition, it may be contended that the present constitution of the Commission having been established by the Act of 1844, precedents which emerged before that date ought not to be quoted as authoritative.

Dr. Adam follows up these two precedents with an analogy taken from the procedure in criminal courts, contained in a passage of which we quote the principal sentences:—

"But our contention is, that, properly speaking, Professor "Smith has not been put on trial; no action of a truly dis- "ciplinary nature has been so much as begun. . . . What "has been done has been of the nature of prevention, not "of punishment. It has been simply precautionary. . . . "When a person is accused of some crime, though he may "ultimately be found perfectly innocent, he is, in the in- "terests of justice and of society, not only charged with his "offence before a judge, and afforded an opportunity of "saying anything he thinks fit in his own behalf, but he is "generally placed in confinement while preparation is being "made for his trial in a regular manner."

From this passage we learn that Professor Smith's suspension was a measure of prevention and precaution, analogous to the imprisonment of an accused person to await his trial, and being so the inference is drawn that the said suspension was right and justifiable.

There are two steps in the analogy in each case which admit of easy comparison.

1. Professor Smith was suspended, says Dr. Adam, with-

out *any action* of a disciplinary nature having been so *much as begun.*

An accused person is imprisoned to await his trial *only in consequence* of a criminal *process* which has been begun. Without a criminal process no magistrate can order incarceration; he is debarred from doing so by the law of the land.

2. Professor Smith's suspension was a measure of prevention or precaution. That is, it was intended to prevent him from repeating his alleged offence by circulating his views through the medium of teaching them to his students.

The criminal magistrate orders the accused person to be imprisoned merely to insure his production on the day of trial, but in no sense to insure against a repetition of the alleged crime.

It is evident, therefore, that Dr. Adam's analogy adduced from the procedure in criminal courts serves his purpose no better than the two precedents which have already been adverted to. His contention in favour of suspension without a process having been begun is tantamount to a denial of the right of *habeas corpus*—a dangerous doctrine for the liberties of the Church, but, as we shall see shortly, in harmony with what seems to be the accepted teaching of the recent majority of the Commission.

Among the more remarkable features of the recent proceedings of the Commission was the adoption by the Committee of a new and exceedingly convenient canon of interpretation, which deserves to be specially noticed. It is brought to light in the "Reasons of Dissent from the report of the Committee" signed by Prof. Lindsay, Dr. Bell, and Mr. M'Crie, where, under heading 1st, we read as follows:

"The Committee have always refused either to appeal to Professor Smith personally, or to take into consideration other statements of his, on the ground alleged over and over again, that this Committee *had nothing to do with Professor Smith's own opinions or beliefs, but only with what they called the 'natural' meaning of the isolated sentences discussed.*"

This passage not having been taken exception to may be accepted as representing accurately the views of the majority of the Committee. The report, as laid before the Commission, bears evidence of the Committee having framed it in harmony with the principles here laid down, and that report having been adopted by the Commission, the whole majority are committed to this canon of interpretation. This canon of interpretation is new, and admits of wide application; by an adherence to its principles critics will be relieved of an enormous amount of trouble. Applied to *Scripture* it would be called *rationalism* of a very marked type; but applied to the writings of a brother office-bearer it is esteemed to be not only allowable but right, more especially if applied by those who presume themselves to be the peculiar repositories of that "general consensus of belief of the church" which is alleged to exist outside the bounds of the Confession of Faith, and which it is proposed to make a test of fitness for office.

Let us try, in the first place, to interpret a passage of Scripture in this fashion—one will suffice for our demonstration, Colossians i. 23: "If ye continue in the faith grounded and settled, and *be* not moved away from the hope of the gospel, which ye have heard, *and which was preached to every creature which is under heaven.*" Mark the clause in italics.

Most people supposed that the heathen nations and peoples of Asia, Africa, America, Australia, and the outlying portions of Europe, not to speak of Greenland and other

polar regions, had not been privileged to hear the sound of the gospel till long, long after apostolic times; that in many of them, indeed, the first sound of the gospel was heard from the lips of Christian missionaries who visited them for the first time within a comparatively recent period. But light shines upon us by adopting the Committee's canon of interpretation. How these nations and peoples may have lost the gospel we know not, but we now have the assurance that the gospel was actually preached to them and to *every creature which is under heaven* eighteen hundred years ago, during the lifetime of the Apostle Paul!!! Such is the style of interpretation which the Committee appear to have applied to the writings of Professor Smith.

Applying the same canon of interpretation to the proceedings of the Commission, it could easily be shown that all the steps taken from the first proposal of the mover of the resolution for a committee of investigation to the conclusion of the case, were parts of a deep-laid scheme carried through in order to work out a foregone conclusion. The proposal of a one-sided committee—the appointment of a one-sided sub-committee — the refusal to print the reasons of dissent—the asking the Commission to hold as read a report which they had not had an opportunity of perusing, &c. &c.—all might be adduced as links of evidence to maintain such a contention. I will not, however, be so unjust as to apply to the Committee and the Commission, and more especially to some excellent friends to whom I stand in this matter in opposition, the canon of interpretation adopted by the Committee in framing the report through which they were enabled to carry a majority. It would, in fact, be cruel to do so.

Another remarkable feature connected with the discussion of this case is the appearance in our Church, in a very

marked manner, among the members of the recent majority of the Commission, of *Ecclesiasticism* both in an *obtrusive* and in an *alarming* form.

A notable example of its *obtrusive* aspect has been already referred to—the ultroneous fulmination launched by Dr. Adam against the elders, savouring more of what we might expect from a High Church Bishop than from a Presbyterian minister.

Its *alarming* aspect will be rendered apparent by some quotations from the public utterances of one important and typical member of the Committee—utterances which have not (so far as I know) been publicly disowned by the leaders of the movement, or by the other members of the majority, and which consequently may very fairly be presumed to have been accepted by them as expressing their own opinions on the subject in question.

In a lecture delivered by the Rev. Dr. Kennedy of Dingwall in his own church, on the evening of November 10, he is reported to have said in reference to Prof. W. Robertson Smith's case:

"Even if it were necessary to depart from strict form in our procedure, it is high time that in dealing with a matter of such cardinal importance we should cease to have our hands tied with red tape, so as no longer to exhibit before Christendom the aspect of weak hesitancy which has marked our action in the past. We must lift this matter out of the hampering forms of a case of discipline. . . . It is high time to think only of what we owe to the cause of truth and to our people. . . . And as to the recently added matter, it ought to be enough to ask the Professor if he acknowledges its authorship. That is all the further process that seems to be required."

So it seems that "strict form" is now to be disregarded as

"red tape." The hampering forms of a "case of discipline" are to be disregarded. The "cause of truth" (Dr. K. being judge) is the only thing to be thought of. A conviction is to be ensured by simply asking, Are you the author of these articles? A process applicable in Professor Smith's case will be of course equally available in others.

Unfortunately sentiments such as these are not new in Scotland. They have a peculiar ring with which all have long been familiar. Witness "the killing times" of the Persecution. One would almost suppose the holders of these sentiments to have been studying under Claverhouse. Here is the record in the *Scots Worthies* of the case of John Brown of Priesthill. "The leisurely way of examining persons by law, in which there was some resemblance of justice, was now departed from. Claverhouse simply asked him why he did not attend the curates, and if he would pray for King James? He said he acknowledged only Christ as supreme Head of the Church, and could not attend curates, because they were placed there contrary to His law.

"Upon hearing this, Claverhouse said, 'Go to your prayers for you shall immediately die.'"

This is a sample of the kind of justice which it is proposed should be meted out under the auspices of Dr. Kennedy, a prominent member of the majority, one of their own chosen instruments, one of the leaders in whose wisdom they confide, and whom they delight greatly to honour.

Towards the close of his pamphlet Dr. Adam writes as follows in reference to the Free Church:—"What is she without the truth, what without the Bible—the old Bible of the Christian Church—the Bible as all inspired, infallible, perfect; the supreme standard of faith and duty?" This passage being a close echo of the peroration of Dr. Adam's

speech in the meeting of the Free Church Presbytery of Glasgow, held 2d December last, may be taken as having been carefully weighed and carefully considered. What does Dr. Adam mean by this passage? Has he merely erected a man of straw for the pleasure of knocking him down? It really looks like it. Who is depriving the Free Church of the truth? Who is taking the Bible from her? Who is calling in question the inspiration of the Bible, or its supreme authority as a standard of faith and duty? The passage reads very much like

"Sound and fury—signifying nothing."

Professor Smith upholds the inspiration of the Bible as stoutly as any of his censors, and with a great deal more intelligence than many of them. Whether his views are right or wrong I presume not to say—time will show;—the Church courts are the proper judges in that question. He says he finds so and so to be the case, and that what he has found has been done by divine guidance, and in no way interferes with his belief in the supreme authority of the Scriptures or their full and complete inspiration. Some of his opponents say in reply, If what you aver be true, Scripture *cannot be inspired.* They make their own narrow conceptions the measure and limit of the *possible* acting of God's Spirit, and propose to fasten these conceptions upon the Church as its standard of belief, in accordance with the holding or rejecting of which office-bearers are to be pronounced sound or unsound. Not only this, but it is proposed to erect these same conceptions, under the guise of "the accepted belief and teaching of the Church," into a test of office when the Confession of Faith is found to be inadequate to meet the requirements of the case. It will be time enough to permit

this "accepted belief and teaching of the Church" to be employed in this manner when it has been formulated and presented to the Church in suitable paragraphs, and passed through the Presbyteries in terms of the Barrier Act.